IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

CHAMBER SUMMONS NO. 706 OF 2005

IN

SUIT NO. 1312 OF 1980

The Cotton Corp. of India Ltd .....*Plffs.*
vs.
Madura Coats Ltd .....*Defnds.*

H.J. Thakkar, Sr. Counsel with R.L. Shah and U. Mahajan i/b. Divekar and Co. for plffs.

Ms. J. Srivastav i/b. Prem J. Ranga for defendants.

CORAM: S.U. KAMDAR, J.

DATE : 28TH JUNE, 2005.

P.C. :

1. The present chamber summons is taken out by the defendants for the purpose of carrying out amendment to the written statement in terms of schedule-1 thereto. By prayer clause (2) of the chamber summons the defendants are also seeking to recall the plaintiffs witness for further cross

examination under order 18 rule 17 of the CPC and by prayer (3) of the chamber summons the defendants are also seeking a leave to further cross-examine the plaintiffs witness Mr.V, Munikrishnan.

2. In so far as amendment to the chamber summons is concerned, the amendment which is sought by incorporating paragraph-6(a) of the written statement is merely a further particulars in support of the averments made in para-6 of the written statement. In my view the amendment does not change any cause of action nor nor prejudicially affect the rights of the plaintiff in the present suit. However learned counsel for the plaintiff has drawn my attention to the issues framed by this court and in particular Issue no.2 which reads as under :

> "2. Whether the defendant proves that the defendant justified in cancelling the contract as the goods imported by the plaintiff was not of contract quality and type ?"

3. He has contended that in view of the aforesaid issue being framed in fact the said amendment is not necessary. It has been further contended by the learned counsel that a proviso in view of introduction of order 6 rule 17 by Amending Act of 2002 to the CPC the present amendment should not be granted once the trial has commenced. In view thereof it has been contended that the said amendment should be rejected. In my opinion the present amendment is required to be granted. Firstly because it does not make out any new case nor it in any way prejudicially affect the rights of the plaintiffs. Secondly Issue no.2 has already been framed and therefore no issue is required to be framed afresh as a consequence to the amendment proposed by the defendant by the present chamber summons.

4. In so far as the proviso to order 6 rule 17 is concerned, I am of the opinion that the proviso

introduced by order 6 rule 17 is a discretionary provisions incorporated under the act and which has to be applied keeping in mind the facts and circumstances of the each case. In the present case the trial though commenced, it is clear that certain facts which are now sought to be introduced by amendment is based on the evidence of the witness of the plaintiff. Furthermore it is merely a statement of particulars of the averments already made in para-6 of the written statement. In view thereof I do not find it necessary that the said amendment should be rejected. In my view the said amendment being of a trival nature can be granted. I accordingly allow prayer (1) of the chamber summons.

5. In so far as prayer clause (2) and (3) are concerned which seeks recalling of the witness under order 18 rule 17 of the Civil Procedure Code my attention has been drawn by the learned counsel for the plaintiff to the judgment of the learned single judge of this court in the case of **Balkrishna Shivappa Shetty vs. Mahesh Nenshi**

Bhakta and Ors reported in AIR 2003 Bom. 293 particularly para-5 thereof. The said para-5 of the judgment reads as under.

> "5. The provisions of law contained in Order 18 Rule 17 of the Code provide that the court may, at any stage of the suit, recall any witness who has been examined and may, subject to law of evidence for the time being in force, put such question to him as the Court thinks fit."

6. In view of the aforesaid judgment of the learned single judge with which I am in complete agreement with it is not possible to grant reliefs as sought in prayer clause (2) and (3). Thus I reject prayer clause (2) and (3).

7. Chamber summons partly allowed in terms of prayer clause (1) only. Amendment to be carried out within two weeks. Plaintiff to pay cost of the amendment quantified at Rs.1,000/-.

sd/-

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